

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL NO. 1:14CR67
(Judge Keeley)

AMBER MCCORMICK,

Defendant.

ORDER ACCEPTING AND ADOPTING MAGISTRATE JUDGE'S
OPINION/REPORT RECOMMENDATION CONCERNING PLEA
TO AN INFORMATION IN A FELONY CASE AND
SCHEDULING THE SENTENCING HEARING

On October 9, 2014, defendant, Amber McCormick ("McCormick"), appeared before United States Magistrate Judge John S. Kaull and moved this Court for permission to enter a plea of GUILTY to the one count Information. McCormick stated that she understood that the magistrate judge is not a United States district judge and voluntarily waived her right to have an Article III judge hear and accept her plea and voluntarily consented to entering a guilty plea before the magistrate judge. The magistrate judge accepted McCormick's waiver of indictment pursuant to Rule 7(b) of the Federal Rules of Criminal Procedure. Since the offense charged in the Information naming McCormick is punishable by a term of imprisonment of greater than one year, the magistrate judge questioned McCormick to determine if her waiver of prosecution by indictment was freely given in a sober and knowledgeable fashion.

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The magistrate judge then advised McCormick of the nature of the charge made in the Information, and inquired whether the defendant had read and reviewed the Information with counsel.

Next, the magistrate judge summarized McCormick's rights to proceed by a Grand Jury indictment and explained that she has a constitutional right to proceed by an indictment, and that the United States is able to charge her by Information only by her waiver of this right. The magistrate judge explained the Grand Jury process to McCormick: that to charge her with an offense a Grand Jury must find probable cause that she committed the offense; that the Grand Jury is composed of at least 16 and not more than 23 persons; and that at least 12 of the grand jurors must find that probable cause exists to so charge her.

McCormick stated that she understood that she had a right to proceed by indictment by a Grand Jury, and that by waiving this right, the United States could proceed to charge her with the Information just as though she had been indicted. McCormick then signed a Waiver of Indictment in open court, and the magistrate judge ordered the Waiver filed.

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Based upon McCormick's statements during the plea hearing and the stipulation of the parties to accept the proffer of the government as an independent factual basis supporting the plea, the magistrate judge found that McCormick was competent to enter a guilty plea, that the plea was freely and voluntarily given, that she was aware of the nature of the charge against her and the consequences of her plea, and that a factual basis existed for the tendered plea.

On October 9, 2014, the magistrate judge entered an Order/Report & Recommendation Regarding Plea of Guilty ("Order/R&R") (dkt. no. 13), finding that a factual basis for the plea existed, and accepting McCormick's plea of guilty to the one count Information. His Order/R&R directed the parties to file any written objections to the Order/R&R within fourteen (14) days after service. It further directed that failure to file objections would result in a waiver of the right to appeal from a judgment of this Court regarding the Order/R&R. The parties have not filed any objections.

Accordingly, this Court **ACCEPTS** the magistrate judge's Order/R&R Regarding Plea of Guilty and **ADJUDGES** McCormick **GUILTY** of

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the crime charged in the one count Information, and pursuant to Fed. R. Crim. P. 11(c)(3)(A) and U.S.S.G. § 6B1.1(c) **DEFERS** acceptance of the proposed plea agreement until it has received and reviewed the presentence report prepared in this matter.

Pursuant to U.S.S.G. § 6A1 et seq.:

1. The Probation Officer shall undertake a presentence investigation of **AMBER MCCORMICK** and prepare a presentence report for the Court;

2. The Government and McCormick are to provide their versions of the offense to the probation officer by **November 3, 2014;**

3. The presentence report is to be disclosed to McCormick, defense counsel, and the United States on or before **December 12, 2014;** however, the Probation Officer is not to disclose the sentencing recommendations made pursuant to Fed. R. Crim. P. 32(e)(3);

4. Counsel to file written objections to the presentence report on or before **December 22, 2014;**

5. The Office of Probation shall submit the presentence report with addendum to the Court on or before **January 3, 2015;** and

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6. Counsel may file any written sentencing statements and motions for departure from the Sentencing Guidelines, including the factual basis from the statements or motions, on or before **January 16, 2015**.

Magistrate Judge Kaull continued McCormick's bond pursuant to the Order Setting Conditions of Release (dkt. no. 12) filed on October 9, 2014.

The Court schedules the defendant's sentencing hearing for **Monday, January 26, 2015 at 3:30 P.M.** at the **Clarksburg, West Virginia** point of holding court.

It is so **ORDERED**.

The Court directs the Clerk to transmit copies of this Order to counsel of record and all appropriate agencies.

DATED: October 20, 2014

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE